

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

CONFIDENTIAL

In the Matter of

Amendment to the Commission's
Regulatory Policies Governing
Domestic Fixed Satellites and
Separate International Satellite Systems

To: The Commission

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IB Docket No. 95-41

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REPLY OF COMSAT CORPORATION

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REPLY OF COMSAT CORPORATION

The question presented by COMSAT in this proceeding¹ is whether a U.S.-licensed common carrier may offer a small amount of U.S.-owned satellite capacity to U.S. customers for U.S. domestic service, under circumstances that clearly promote competition and do not harm any identifiable U.S. policy objectives. Although the answer to this question should be self-evident, COMSAT's Petition was opposed by a number of operators of existing and planned satellite and undersea cable facilities, all of whom view COMSAT as unwanted competition. Not one of them even purported to speak for the U.S. consumers who would benefit from the additional choices and lower prices arising from the services that COMSAT would provide. These opponents argue that action on COMSAT's request must be deferred yet again until a decision is made in the DISCO-II proceeding. At the same time, these parties

¹ COMSAT's Petition for Partial Reconsideration and Request for Interim Relief, filed April 11, 1996 (hereafter "Petition") seeks review of the Commission's *Report and Order*, FCC 96-14 (released Jan. 22, 1996), summary published 61 Fed. Reg. 9946 (Mar. 12, 1996) (hereafter "DISCO-I Order").

stoutly defend the current regulatory double standard that allows them -- but not COMSAT -- to provide both domestic and international service.

COMSAT respectfully submits that none of the objections raised by its opponents in any way undercuts the validity of the points made in its Petition. Accordingly, the Commission should act promptly to allow COMSAT to provide domestic service on an interim basis using capacity from the INTELSAT and Inmarsat satellite systems.²

I. GRANT OF COMSAT'S PETITION WOULD PROMOTE COMPETITION IN THE U.S. DOMESTIC MARKET

By this Petition, COMSAT seeks to offer two types of service: domestic service that is "incidental" to international service, and "pure" domestic service unrelated to international service. Allowing COMSAT to provide both these types of service would expand consumer choice and (in the case of pure domestic service) help alleviate the current domestic capacity shortage. This in turn would tend to lower prices and thereby promote competition.

The oppositions to the Petitions themselves demonstrate the benefits to competition that would result from COMSAT's provision of INTELSAT and Inmarsat capacity for domestic as well as international service. AT&T, for example, glowingly praises the competitive benefits

² In its Petition, COMSAT expressly conditioned its request on conformity to the outcome of the DISCO-II proceeding, which at that time had not commenced. The Commission has since initiated that proceeding, and has tentatively concluded that any policies adopted therein would not apply to applications pending when the notice of proposed rulemaking was adopted. *Regulatory Policies to Allow Non-U.S.-Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, FCC 96-210 at 21 (released May 14, 1996) ("DISCO-II NPRM"). COMSAT had applied for Section 214 authority to provide domestic land mobile and aeronautical services via Inmarsat capacity before adoption of the DISCO-II NPRM. As proposed, these applications would be reviewed under existing policies.

of "one-stop shopping" while vigorously seeking to deny COMSAT the ability to offer customers the same convenience.³ And TRW opposes COMSAT's entry into the domestic market precisely because it would increase the amount of capacity available to U.S. customers and thus could lead to lower prices.⁴

In fact, the amount of capacity potentially available from COMSAT within the near term is quite small. Since COMSAT filed its petition, the total amount of INTELSAT capacity estimated to be available for U.S. domestic service at year-end 1996 has declined to 29 36-MHZ units. This is approximately 2.1 % of total INTELSAT system capacity. Moreover, only six of these 29 36-MHZ units are on satellites providing near full-CONUS coverage.⁵ Nevertheless, by increasing the supply of capacity and expanding choices even to a small degree, COMSAT's interim provision of domestic service could only benefit consumers.

Some argue, nonetheless, that COMSAT's entry would be "detrimental to fair competition" because of COMSAT's (or INTELSAT's or Inmarsat's) alleged "market power."⁶ Such arguments have no factual basis whatsoever. First, there is not a shred of

³ AT&T at 3-4. Ironically, AT&T has approached COMSAT twice during the past three years to discuss obtaining INTELSAT capacity for U.S. domestic use.

⁴ TRW at 5, n.9.

⁵ The situation with respect to Inmarsat is similar. Because capacity on the Inmarsat system is generally demand-assigned, it is impossible to estimate "available" capacity. Currently, however, there is only one Inmarsat satellite with the full-CONUS coverage that is best suited for U.S. domestic service, and that satellite, of course, must continue to satisfy international demands as well.

⁶ *E.g.*, AT&T at 6-7; Motorola at 7-8.

evidence that COMSAT's use of INTELSAT or Inmarsat capacity for either incidental or pure domestic service would have the slightest ability to raise prices or restrict output in the U.S. domestic market, which is the *only* relevant market for purposes of this analysis.⁷ There is a vast amount of existing domestic capacity -- as of year end 1995, approximately 34 Domsats provided full-CONUS coverage⁸ -- and the owners of these satellites include some of the largest companies in the world, such as AT&T, Hughes and GE. It is difficult even to conceive how a relatively small company such as COMSAT could threaten the dominance of these companies.⁹ Moreover, given that COMSAT -- unlike separate systems, AMSC or even AT&T -- is still subject to dominant carrier regulation in its provision of INTELSAT and Inmarsat services, concerns about its ability to price anticompetitively are surely not well-taken. In fact, allowing U.S. consumers the option of using COMSAT's INTELSAT or Inmarsat capacity for domestic communications will simply increase their service choices, and thus will enhance competition.

⁷ As the Court of Appeals stated in *United States v. Western Electric Co.*, 900 F.2d 283, 296 (D.C. Cir. 1990), the argument that a "monopoly" in one market could be "leveraged" into another market has no significance absent a showing that the alleged monopolist could raise price or restrict output in the market it seeks to enter. Such is hardly the case here. In any event, COMSAT has no market power internationally from which to leverage. See Houthakker/Brattle Group, "Competition in the Market for Transoceanic Facilities-Based Telecommunications Services," submitted in RM-7913 (and in this proceeding), at 3.

⁸ Of course, a complete assessment of domestic capacity would also need to take into account the vast wireline and wireless networks already existing in the U.S.

⁹ COMSAT's total INTELSAT and Inmarsat revenues in 1995 were less than \$500 million, a figure dwarfed by the multi-billion dollar revenues of AT&T, Hughes and GE, as well as those of potential MSS competitors such as Motorola and TRW. In addition, COMSAT's market capitalization is far less than that of not only these companies, but also separate system competitors such as PanAmSat.

Second, the mere fact that COMSAT has exclusive access to INTELSAT and Inmarsat does not give COMSAT any market power in the U.S. domestic market. COMSAT no more has market power in the U.S. domestic market due to such access than does, say, PanAmSat due to its exclusive access to the four PanAmSat satellites now providing global services. Indeed, if anyone has market power, it is those entities that are able to package both domestic and international services free of competition from COMSAT. Moreover, claims that COMSAT has special advantages because of its alleged "privileges and immunities" are simply wrong.¹⁰ COMSAT is fully subject to U.S. taxation, and it is also fully subject to U.S. antitrust laws in its role as a U.S. common carrier providing INTELSAT and Inmarsat capacity.¹¹

Some parties defend the competitive disadvantage at which the DISCO-I Order places COMSAT by arguing that INTELSAT and Inmarsat are not "U.S." satellite systems¹² and that COMSAT is merely a "reseller" of "foreign" capacity.¹³ Such comments reflect a serious misunderstanding of the relationship of COMSAT to the INTELSAT and Inmarsat systems. INTELSAT and Inmarsat function as space segment cooperatives, not as carriers, and ownership in both systems is a function of utilization. Thus, COMSAT effectively owns the INTELSAT and Inmarsat capacity that it uses to provide service, and that ownership stake

¹⁰ AT&T at 7; Motorola at 3-5; Orion at 6.

¹¹ See generally *Alpha Lyracom Space Comm., Inc. v. Communications Satellite Corp.*, 946 F.2d 168, 170 (2d Cir. 1991), *cert. denied*, 502 U.S. 1096 (1992).

¹² PanAmSat at 2; Columbia at 3 (COMSAT is not "similarly situated"); Motorola at 2.

¹³ Columbia at 3 & nn.4-5; TRW at 3 & nn.4-5.

arises from COMSAT's very substantial investment in both systems -- all of which was made with FCC approval.

Moreover, U.S. ownership of COMSAT itself is much greater than that of, say, PanAmSat and Orion, both of which have substantial foreign ownership.¹⁴ Thus, both COMSAT *and* the INTELSAT and Inmarsat capacity with which it provides service are U.S.-owned, and it would be both fair and pro-competitive to allow COMSAT to serve U.S. domestic customers with this capacity.

II. GRANT OF COMSAT'S PETITION WOULD NOT PREJUDGE THE ISSUES IN THE DISCO-II PROCEEDING OR HAVE ANY ADVERSE EFFECT ON U.S. INTERNATIONAL TELECOMMUNICATIONS POLICY OBJECTIVES

Several parties contend that COMSAT's Petition has been rendered moot by the commencement of the DISCO-II proceeding.¹⁵ That is simply untrue. COMSAT seeks immediate interim relief pending a decision in DISCO-II. By definition, this request is not moot. Nor would grant of COMSAT's Petition prejudice the outcome of DISCO-II.¹⁶ First, to the extent that COMSAT has previously applied for authority under Section 214 to provide domestic services using Inmarsat capacity, the Commission has tentatively concluded that such applications would not be evaluated under DISCO-II policies. Thus, DISCO-II would not

¹⁴ U.S. satellite operators that are non-common carriers (including all separate systems and most Domsats) are not subject to foreign ownership restrictions even though they are licensed by the FCC. COMSAT, by contrast, is fully subject to common carrier regulation, including foreign ownership restrictions -- yet its opponents contend that it should not be allowed to provide U.S. domestic service.

¹⁵ Columbia at 2; TRW at 2.

¹⁶ PanAmSat at 3; Columbia at 5; GE Americom at 9-10; TRW at 7.

affect these Inmarsat services. Second, as to INTELSAT capacity, COMSAT's request is explicitly conditioned on a willingness to comply with whatever decisions are reached in DISCO-II. Therefore, there can be no issue of prejudgment. While the DISCO II NPRM appears to assume that the Commission, by its own actions, can influence the national telecommunications policies of foreign administrations, that is demonstrably not the case with respect to the services that COMSAT seeks to offer here.¹⁷

Finally, consideration of COMSAT's Petition should not be deferred until such time as INTELSAT and Inmarsat are restructured, as AT&T and Motorola suggest. This argument is particularly inappropriate because the Petition concerns use of the INTELSAT and Inmarsat systems as they exist today, not in some indefinite future.

III. CONCLUSION

Continuation of the existing ban on COMSAT's provision of U.S. domestic service would undermine the interests of American users of satellite capacity with no counterbalancing public interest benefit. The *only* beneficiaries of such a policy would be the special interests

¹⁷ The only possible benefit that foreign administrations would derive if COMSAT were allowed to provide U.S. domestic service via INTELSAT and Inmarsat would be if such use increased the overall utilization of either system and thereby decreased unit costs. However, any such benefit would clearly be trivial. The provision of incidental domestic service by COMSAT would not increase system utilization at all (since the capacity in question would already be utilized for international service), and there is not enough INTELSAT or Inmarsat capacity available for "pure" domestic service to have any meaningful effect on overall system utilization, even if one were to assume (contrary to fact) that none of this capacity could be utilized for any other purpose. Moreover, the effect on any particular foreign administration of an overall increase in total system utilization would be even less significant, given the very small percentages of ownership held by most of those administrations.

that seek to foreclose new competitive entry. For these reasons, and those stated in its Petition, COMSAT respectfully requests partial reconsideration of the DISCO-I Order. In particular, COMSAT requests immediate interim authority to provide U.S. domestic service using INTELSAT and Inmarsat capacity.

Respectfully submitted,

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June 5, 1996

CERTIFICATE OF SERVICE

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